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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,233	07/19/2001	Peter Robert Foley	CM2505	8663

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/909,233	FOLEY ET AL	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 6/23/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 12, 14-16, 18-29, 35, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 36-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-8, 12, 14-16, 18-29 and 35-42 are pending. Applicant's arguments and amendments filed 6/23/06 have been entered. Claims 9-11, 13, 17, 30-34, 43, and 44 have been canceled. Claims 36-40 have been withdrawn from consideration as being drawn to a non-elected invention.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/23/06 has been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Objections/Rejections Withdrawn

2. The following objections/rejections as set forth in the Office action mailed 4/5/06 have been withdrawn:

The rejection of claims 1-8, 10, 12, 14-16, 18-29, 35, 41, and 42 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 12, 14-16, 18-29, 35, 41, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 1, it is vague and indefinite in that it contains the tradename "Iaponite" and trademarks are not proper claim language. Note that, if the trademark or tradename is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of the 35 USC 112, second paragraph. SEE MPEP 2173.05(u). Note that, claims 2-8, 12, 14-16, 18-29, 35, 41, and 42 are also rejected due to their dependency on claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-8, 10, 12, 14-16, 18-29, 35, 41, and 42 are rejected under 35 U.S.C. 103(a) as obvious over JP 60-141800 in view of Trinh et al (US 6,194,362), Culshaw et al (US 5,202,050), Weibel (US 5,821,214), and Ofosu-Asante (US 5,739,092).

'800 teaches a liquid detergent composition containing 0.1 to 10% by weight of a swellable clay mineral, 0.1 to 30% of a solvent, 1 to 20% of a surfactant and 0.5 to 30% of an alkali agent. Suitable solvents include diethylene glycol monobutyl ether, etc. See page 4, lines 10-50. Note that, amine oxide surfactants and monoethanolamine may also be used in the compositions. See page 9, lines 1-30. Suitable additional ingredients include fragrances, dyes, etc. See page 6, lines 1-15.

'800 do not specifically teach the use of odor masking perfumes, a mixture of sol forming and gel forming laponite clays, xanthan gum, and a magnesium chloride, or a detergent composition having the specific physical parameters containing a solvent, an odor masking perfume, a mixture of sol forming and gel forming laponite clays, xanthan gum, magnesium chloride, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Trinh et al teach liquid aqueous, hard surface detergent compositions having improved cleaning and good filming/streaking characteristics comprising from about 0.0015 to about 3% of a blooming perfume composition comprising at least about 50% of blooming perfume ingredients selected from the group consisting of perfume ingredients having a boiling point of less than about 260 degrees Celsius; from about 0.001% to about 2% of a detergent surfactant; from about 0.5% to about 30% of a hydrophobic solvent, and the balance being an aqueous solvent system comprising water and a solvent such as methanol, ethanol, isopropanol, ethylene glycol, propylene glycol, glycol ethers, etc. See column 1, line 55 to column 2, line 30. Suitable perfumes include blooming perfume ingredients and extensive mixtures of perfumes, including ionone, which encompass the blooming perfumes and ionones as recited by the instant claims. See column 6, line 10 to column 10, line 1.

Suitable glycol ethers include monopropylene glycol monopropyl ether, diethyleneglycolmonohexyl ether, monoethyleneglycol monobutyl ether, etc. See column 14, lines 54-65.

Weibel teaches a hard surface scouring cleaner composition comprising from 0.5 to 10% of soft abrasive articles, from 0.5 to 2.5% of a chlorine-containing bleach, from 0.2 to 3% of a thickening system comprising from 0.2 to 3% based on the weight of the composition of a cross-linked polyacrylate resin and from 0 to 2.5% of a synthetic smectite clay, from 0.25 to 3% of a bleach stable surfactant system, from 0 to 3% of an electrolyte, and a sufficient amount of sodium or potassium hydroxide to provide a pH in the range of 11.5 to 13.5. See Abstract. The preferred synthetic smectite clays are sold

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under the trademark Laponite and particularly useful are Laponite RD and Laponite RDS. Note that, these are the same as the laponite materials listed as the gel forming and sol forming materials on page 13, lines 10-35 of the instant specification.

Ofosu-Asante teaches liquid or gel dishwashing detergent compositions containing alkyl ethoxy carboxylate surfactant, calcium or magnesium ions, etc. See Abstract. The presence of calcium or magnesium ions improves the cleaning of greasy soils for compositions, manifest mildness to the skin, and provide good storage stability. See column 6, lines 40-55.

Culshaw et al teach safe and effective hard-surface cleaning compositions which contain a binary mixture of an organic solvent and a narrowly defined chelating agent. See Abstract. Suitable organic solvents include benzyl alcohol, 2-(2-butoxyethoxy)ethanol, 1-(2-n-butoxy-1-methylethoxy)propane-2-ol, etc., and can be used in amounts of from 1% to 20%. See column 5, lines 1-30. In addition to the essential chelating agent/solvent binary mixture, the compositions can contain additional ingredients such as surfactants and suitable surfactants include anionic, nonionic, cationic, amphoteric, and zwitterionic surfactants. See column 5, lines 45-69. Also, thickeners may be used in the compositions in amounts from 0.2% to 1.5% and include xanthan gums, smectite clays, etc. See column 6, lines 55-69. Highly desirable ingredients for use include hydrotropes such as monoethanolamine, diethanolamine, triethanolamine, etc. See column 6, lines 15-35. The pH of such compositions will generally be in the range of from 5 to 11. See column 7, lines 50-60.

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It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use xanthan gum in the cleaning composition taught by '800, with a reasonable expectation of success, because Culshaw et al teach the equivalence of smectite clays to xanthan gum in a similar cleaning composition and further, '800 teaches the use of thickening agents such as swellable clay minerals including smectite clay minerals.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use Laponite RD and Laponite RDS in the cleaning composition taught by '800, with a reasonable expectation of success, because Weibel teaches the use of Laponite RD and Laponite RDS as smectite thickening agents in a similar cleaning composition and further, teaches the use of thickening agents such as swellable clay minerals including smectite clay minerals. Note that, with respect to the use of xanthan gum, sol forming and gel forming laponite clays as suggested by '800 in combination with Culshaw et al and '800 in combination with Weibel, note that, it is well settled that where the prior art teaches the equivalence two compounds for the same purpose, it is obvious to use a mixture of the compounds for the same purpose. See MPEP 2144.06 (*In re Kerkoven*).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a mixture of perfume ingredients as recited by the instant claims in the composition as taught by '800, with a reasonable expectation of success, because Trinh et al teach a similar hard surface cleaning composition containing such

perfume ingredients and further, '800 teach the use of optional components including perfumes.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium or calcium ion(s) in the cleaning compositions taught by '800, with a reasonable expectation of success, because Ofosu-Asante teaches the advantageous properties imparted to a similar hard surface cleaner when using magnesium and/or calcium ions.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a solvent, an odor masking perfume, a mixture of sol forming and gel forming laponite clays, xanthan gum, magnesium chloride, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '800 in combination with Trinh et al, Culshaw et al, and Weibel suggest a cleaning composition containing a solvent, an odor masking perfume, a mixture of sol forming and gel forming laponite clays, xanthan gum, magnesium chloride, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of '800 in combination with Trinh et al, Culshaw et al, Ofosu-Asante, and Weibel would encompass compositions having the same pH, liquid surface tension, reserve alkalinity in the presence of acidic soils, and other physical parameters as recited by the instant claims

because '800 in combination with Trinh et al, Culshaw et al, Ofosu-Asante, and Weibel suggest compositions containing the same components in the same amounts as recited by the instant claims.

Response to Arguments

First, note that, Applicant states that in several instances the Examiner resorts to invoking "one of ordinary skill in the art" in order to supply various features or suggestion to combine the teaching of various cited documents and Applicant submits that this is improper under 35 USC 103. In response, note that, the Examiner is unclear with respect to Applicant's assertion; the standard under 35 USC 103 is whether it would have been obvious to one skilled in the art to formulate the claimed invention from the teachings of a reference, alone or in combination with other references. Thus, the Examiner maintains that the correct standard of whether the invention is obvious to one of ordinary skill in the art has been applied.

With respect to JP '800, Applicant states that the reference is indefinite in that the phrase "smectite-type", which appears in '800, was previously rejected when the phrase appeared in the instant claims under 35 USC 112, second paragraph, as being indefinite, in the Office action mailed 11/3/05. In response, note that, the determination of whether claim terminology should be rejected under 35 USC 112, second paragraph, as indefinite and what the prior art teaches are two separate issues. The Examiner maintains '800 is relied upon for all that one of ordinary skill in the art could gain from its disclosure and what "smectite-type" would suggest to one skilled in the art. Thus, the fact that the term "smectite-type" appearing in the instant claims was previously rejected

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under 35 USC 112, second paragraph, as being indefinite has no bearing on the suggestive disclosure of '800, and the term "smecite-type" appearing in the reference is by no means considered indefinite.

With respect to JP '597, Applicant states that the reference clearly discloses that the properties of organic thickeners are different from clay thickeners and that clay should be substituted for and not admixed with organic thickeners. In response, note that, Applicant's arguments with respect to JP '597 are moot since this reference has been withdrawn and a new ground of rejection has been made, as set forth above, which was necessitated by Applicant's amendment.

With respect to Trinh et al ('362), Applicant states that while various optional ingredients are listed in '362, clay or clay/gum combinations do not appear to be suggested. In response, note that, Trinh et al is a secondary reference relied upon for its teaching of perfumes and not thickening materials. As set forth above, the Examiner asserts that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume comprising an ionone as recited by the instant claims in the composition as taught by '800, with a reasonable expectation of success, because Trinh et al teach a similar hard surface cleaning composition containing a perfume comprising an ionone further '800 teach the use of optional components including perfumes.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Gregory R. Del Cotto
Primary Examiner
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GRD
July 9, 2006